

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/743,616 Confirmation No. : 8217

Applicant : Jeff S. Eder

Filed : 22 December 2003

Art Unit :: 3692

Examiner : Jennifer Liversedge

Docket No. : AR - 61

Customer No.: 53787

NON STATUTORY CLAIM REJECTION

Sir or Madam:

The February 11, 2008 Office Action for the above referenced application contains what appears to be a non-statutory rejection of claims for a purported lack of written description. Reasons these claim rejections appear to be non-statutory include:

1. The rejections appear to be based on a conclusory statement as no evidence was provided to support these claim rejections. U.S.P.T.O. decisions require the support of substantial evidence (see in re Gartside) and written description rejections require a preponderance of evidence (see MPEP 2163);
2. The rejections also appear to be based on a mis-interpretation of in re Mayhew. The Assignee is relying on the interpretation of in re Mayhew advanced by the U.S.P.T.O. in model answers for the October 16, 2002 registration examination (filed concurrently) and finds no support for the interpretation provided by the Examiner; and
3. Written descriptions are valid if they teach someone of average skill in the art how to make and practice an invention. The 2/11/2008 Office Action contains no evidence that anyone of average skill in the art had any difficulty understanding the written description.

To correct this apparent error, the Assignee is hereby requesting that an affidavit under 37 CFR 1.104 detailing the facts in the personal knowledge of the Examiner (or anyone else in the Office that provided input to the written description rejection) that support the written description claim rejections be forwarded to the Assignee within the next 30 days. The affidavit should also identify the combination of teachings that were independently developed by those whose opinions were cited as the basis for the affidavit. The Supreme Court has determined that those of average skill in the art have the ability to independently combine teachings to form new inventions. Identifying the combinations of teachings developed by those whose opinions were used will thus provide evidence that they possess the required level of skill in art. If the Examiner is unable to provide any evidence to support the claim rejections within the requested time period, then the Assignee respectfully submits that the Examiner should withdraw the apparently non-statutory claim rejections.

Respectfully submitted,
Asset Trust, Inc.

/B.J. Bennett/

B.J. Bennett, President
Date: May 9, 2008